THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23447 of 2006

Dated: 13-11-2006

Between:

Union of India, rep. by its Secretary, New Delhi and another.

..... PETITIONERS

AND

The District Collector, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.23447 of 2006

ORDER:

The Union of India, New Delhi, and the Defence Estate Officer, Andhra Pradesh Circle, Secunderabad, filed present writ petition challenging the proceedings of respondent No.2 dated 01-06-1970 in case No.B6/21051/1970 on the ground that the impugned order is vitiated by fraud played by respondents 3 and 4.

The brief fact of the matter as alleged in the affidavit accompanying the writ petition may be noted as under.

Respondent No.1 claims that the lands admeasuring Acs.1500.24 guntas in Mohammadi Lines, Ibrahim Bagh, Makkai Darwaza Lines, Banjara Darwaza Lines and Asifnagar Lines i.e., in and surrounding Hyderabad, were transferred to Government of India, Ministry of Defence and that by virtue of Article 295(1) of the Constitution of India, they vested in Government with effect from 01-04-1950. The lands were also allegedly taken over by the Government of India. It is alleged that in the revenue records (Pahanies), Government of India was shown as the owner of the land. On an application made by one Zainab Saheba Bee (not party to this case), respondent No.2 conducted enquiry in Case No.B6/21051/1970, ordered deletion of name of Government of India in column No.13 of Khasra Pahani and directed to enter the names of respondents 3 and 4 in respect of the land admeasuring Acs.17.26 guntas in survey No.31/1 situated at Kahimpet Village, Hyderabad. After obtaining orders of respondent No.2, respondents 3 and 4 filed suits, being O.S.Nos.736 and 2583 of 1998, on the file of the Court of XIV Junior Civil Judge, Hyderabad, for mandatory injunction. The same were decreed on 26-09-2003 and 16-08-2004 respectively. Aggrieved by the same, petitioner No.1 herein filed A.S.No.183 of 2005 and petitioner No.2 herein filed A.S.No.579 of 2004 before the Court of II Additional Chief Judge, Hyderabad, and the same are pending. As the impugned order was the basis for the civil Court's decrees, which are now under appeal, the petitioners applied for certified copy of the impugned order on 18-08-2006 and filed this writ petition seeking invalidation of the order of respondent No.2 dated 01-06-1970 after a lapse of more than thirty six years.

The learned counsel for the petitioners strenuously contends that fraud unravels everything and respondents 3 and 4, who obtained favourable orders from respondent No.2 by playing fraud, should not be allowed to reap the benefit. Secondly, he would urge that though the impugned order itself was the basis for the civil Court's decrees, unless and until the impugned order is set aside on the ground of fraud, the civil

Court may not be in a position to go into the question.

There cannot be any dispute that the delay and lapse should deny any judicial review of the matter at this stage. Secondly the matter regarding entitlement of respondents 3 and 4 for correction of entries is already before the appellate Court in A.S.Nos.574 of 2004 and 183 of 2005 and it is always open to the petitioners/appellants therein to raise the question of fraud, which can be decided by the civil Court as collateral issue. The jurisdiction of this Court under Article 226 of the Constitution of India in a matter of this nature ordinarily would not be exercised as it would prejudice parties before the civil Court. Therefore, this Court is not inclined to accept the writ petition.

The writ petition is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

13th November, 2006
ghn